

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN JIM SHOCKLEY**, on February 24, 2003 at 8 A.M., in Room 137 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Jim Shockley, Chairman (R)  
Rep. Paul Clark, Vice Chairman (D)  
Rep. Jeff Laszloffy, Vice Chairman (R)  
Rep. George Everett (R)  
Rep. Tom Facey (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Christopher Harris (D)  
Rep. Michael Lange (R)  
Rep. Bruce Malcolm (R)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. John Parker (D)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Scott Sales (R)  
Rep. Ron Stoker (R)  
Rep. Bill Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** John MacMaster, Legislative Branch  
Lisa Swanson, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 703, 2/20/2003; HB 701,  
2/20/2003  
Executive Action: HB 497; HB 701; HB 510; HB 703; HB  
695; HB 289

**HEARING ON HB 703**

**Sponsor:** REP. JOHN PARKER, HD 45, Great Falls

**Opening Statement by Sponsor:**

**REP. PARKER** opened on HB 703. He stated that this bill provides a mild retooling of the definitions in the Youths In Need Of Care statute. He explained the bill deals with the intersection between the criminal laws regarding the prosecution of domestic violence cases, and the civil laws dealing with how and when a child could be taken from the home in certain situations. He stated that this bill attempts to take away disincentives victims may feel in reporting domestic crimes.

**{Tape: 1; Side: A; Approx. Time Counter: 1 - 20}**

**Proponents' Testimony:**

**Beth Satre, Montana Coalition of Sexual and Domestic Violence, Helena,** supported HB 703. She stated that domestic violence is one of the leading causes of injuries to women. She stated women do not leave violent relationships because of the children and for economic reasons. She explained that batterers often tell women if they ask for help, their children will be taken away. She stressed that this bill would help alleviate that fear and encourage victims to come forward without fear of losing their children.

**Julia Heemstra, Coordinator Montana Women's Shelter, Bozeman,** supported HB 703. She stated that the current law would charge both parties with the psychological abuse of a child if the child witnessed domestic abuse. Studies suggest that 80 percent of children who grow up in abusive households witness abuse at one time or another. In order to comply with the current law, **Ms. Heemstra** stated she should be reporting everyone who calls her crisis line. Such a requirement trumps the purpose of a shelter which is to be a safe place to flee to or to discuss the problem. Under the current law, people would not do either.

**EXHIBIT(juh41a01)**

**Ellen Donahue, Executive Director of Save Space, Butte,** supported HB 703. She stated that Save Space receives money from the Department of Public Health and Human Services (DPHHS) which it cannot afford to turn down. In order to receive the money, Save Space must report to DPHHS whenever women with children visit or contact them. Save Space informs people right up front that it will report their contact to DPHHS. She stated that many women

have hung up or will not come in because of this law. She stated that in 2001, they had 69 children come into the shelter, and in 2002, 37 children visited the shelter. She felt certain that this reduction in the number of children is a direct result of the current reporting requirements. The current law holds victims responsible for being abused. She explained the current law in effect states to the victim, "If you don't get out of this situation, we are taking your kids" when it should say to the perpetrator, "If you don't stop what you're doing, you won't see your kids." She emphasized that mandatory reporting for agencies who receive DPHHS money is not working and she fears it may cost a victim her life.

***{Tape: 1; Side: A; Approx. Time Counter: 21 - 131}***

**Dan Mennis, Attorney, Montana Legal Services**, supported HB 703. He stated this bill would protect children and encourage reporting. He stated that victims remain with abusers out of fear of leaving, fear of losing their kids, and financial insecurity.

**Shirley Brown, DPHHS**, supported HB 703. She worked with the domestic violence people in drafting this bill. The bill's purpose is to put in statute, that the dynamics in a family where domestic violence occurs are different from a family situation where child abuse, but no domestic violence, occurs. She felt this bill strikes a balance of protecting children while protecting the rights of the victimized adult. She urged a do pass.

***{Tape: 1; Side: A; Approx. Time Counter: 128 - 176}***

**Opponents' Testimony:**

**Mike Barrett, Poet, Letter Writer, Former Town Councilman, Helena**, opposed HB 703.

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. RICE** asked Shirley Brown about Page 6, Line 7, regarding a violent person being removed from the house. **Ms. Brown** stated that when there is an allegation of abuse, they do provide supervised visitation. Over time, as the abuser is working through the issues which led to the abuse, they may get to unsupervised visits.

***{Tape: 1; Side: A; Approx. Time Counter: 177 - 257}***

**Closing by Sponsor:**

**REP. PARKER** closed on HB 703 stating that the bill is trying to address incentives to deal with a complex social problem. He stated there are two victims in the scenario the bill addresses, the adult victim and the child. He urged a do pass.

**HEARING ON HB 701**

**Sponsor:** **REP. BRAD NEWMAN, HD 38, Butte**

**Opening Statement by Sponsor:**

**REP. NEWMAN** opened on HB 701 stating that he carried it for the Montana Judges and Clerk of Montana Supreme Court. This bill deals with employees of the Judiciary and would provide exemptions from the Judicial Branch personnel and payroll plan. He stated it would allow judges to hire and keep their staff and that the law recognizes the importance of allowing certain government positions to hire their own staff. For example, the Governor hires her own staff and does not have to advertise or be subjected to the regular state hiring procedures. Appointed personnel staff of the roughly 50 state elected officials in the Judicial Branch of government would be exempt from the recruitment and classification process. He stressed the law recognizes the personal and confidential nature of the work which staff provides to those officials. He submitted that Judicial Branch officials need that same option in hiring their own staff. He closed stating this bill would not affect the pay matrix.

***{Tape: 1; Side: A; Approx. Time Counter: 258 - 365}***

**Proponents' Testimony:**

**Kirk Krueger, Second Judicial District Court, Butte**, served in the 47th Legislative Session. He stated that the judge who preceded him, Judge Purcell, had his own staff. Although Judge Purcell's clerk did a good job for him, he wanted his own staff, and long term paralegal. He stated he defeated Judge Purcell and wanted to make some changes using his own staff to do that. He felt it is imperative for a judge to be able to select their own staff.

***{Tape: 1; Side: A; Approx. Time Counter: 351 - 447}***

**Ed Smith, Clerk of Montana Supreme Court**, supported HB 701. He stated that this bill would allow him and others to appoint their own staff. He stated that prior to the passage of the State Assumption Bill, the Supreme Court Justices, the District Court

Judges, and the Clerk of the District Court were allowed to hire their own staff. He emphasized this bill would not affect the pay matrix.

***{Tape: 1; Side: A; Approx. Time Counter: 448 - 497}***

**Harris Himes, Attorney, Helena,** supported HB 701.

**Opponents' Testimony:** None

**Karla Gray, Chief Justice, Montana Supreme Court,** spoke as an informational witness. She stated that State Assumption is a reality but resistance remains. HB 701 requests changes to Section 3113, the first section of the State Assumption Bill. That section requires the Supreme Court to adopt a plan of personnel administration for all nonelected employees of the Judicial Branch. The Supreme Court did so in two pieces. In June 2002, the Court adopted a compensation plan effective pursuant to the State Assumption Bill and adopted personnel policies in May, 2002. Neither of those pieces includes personal staff exemptions.

She stated that HB 701 intrudes into the Courts compensation plan and personnel policies to accomplish two things: First, judges and Mr. Smith would set the salaries for fifty Judicial employees, and Second, it would allow judges, justices, and Mr. Smith to fire employees without cause. She stated the Court did not request this bill and in fact it is contrary to the Court's classification/compensation and personnel policies.

She stressed her disappointment that judges have so little regard for their employees. She felt strongly that every citizen has a fundamental right to redress grievances. She stated that in her 13 years on the Court, not one Justice fired an existing staff member. She emphasized her clerk's First Amendment right; that she has no idea who her law clerk supported for Chief Justice in 2000. She stated that the only concern she has is whether her clerk does her job, "and she does!"

**EXHIBIT(juh41a02)**

**EXHIBIT(juh41a03)**

***{Tape: 1; Side: B; Approx. Time Counter: 1 - 156}***

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. LASZLOFFY** stated his concern over the Legislature getting involved in a turf war amongst the Judicial Branch. He asked Mr. Smith to convince him why it should. **Mr. Smith** responded that when State Assumption passed, the language of the law was flawed. He stated that when the interim Committee studied State Assumption the Court wasn't watching it closely. He stated he testified at the hearing and had great concern that elected officials in the Judicial Branch would not be able to appoint their staff. He stated both he and the Attorney General are allowed to appoint their own deputy. He stated he is flabbergasted because the Chief Justice replaced the secretary of one chief justice who had worked for 16 years and brought in her own secretary, and brought in her own law clerk. Judge Ergoine in Sidney, has a terrible situation. She defeated the judge and replaced the one staff person with her own and is now facing litigation and grievance charges.

***{Tape: 1; Side: B; Approx. Time Counter: 156 - 224}***

**REP. FACEY** asked whether court reporters would be covered under this bill. **Mr. Smith** responded that they would be considered classified employees. **Judge Krueger** responded that twenty out of thirty-three district court judges support this bill. **Chief Justice Gray** commented that 160 Judicial employees could be impacted by HB 701. **Justice Gray** first noted that since she was designated as an opponent, she wanted the record to reflect that she was appearing in the capacity of a Justice of the Court and not the Chief Justice. Regarding the fiscal note, she stated that she saw a draft fiscal note from the budget office, showing that it would potentially remove 160 employees from the Judicial Branch pay plan, and allow hiring authorities to set salaries for those positions at any level. She emphasized that the fiscal impact cannot be predicted. She explained that the Judicial Branch employs about 325 people which includes about 50 elected officials.

**REP. GUTSCHE** asked whether Justice Gray replaced and appointed new staff when she took over the Court. **Chief Justice Gray** responded that she brought her own secretary but the former Chief's secretary was not fired and now works for other Court members.

***{Tape: 1; Side: B; Approx. Time Counter: 225 - 452}***

**Closing by Sponsor:**

**REP. NEWMAN** closed on HB 701. He stated that the fiscal not is inadequate as currently written and he would not sign it. The top elected officials in Montana, such as the governor and the attorney general positions, are allowed to hire their own staff because of the confidential and delicate nature of their positions. They need staff they can trust with not only day to day, but confidential and sensitive matters as well. He emphasized that they would never force a personal assistant onto the governor's position.

He stated that the Judicial Branch is political and should have the same considerations as the positions of governor and attorney g--eneral. He explained that Judge Ergoine, a district court judge in Sidney, beat the former judge whose one employee had campaigned vigorously against her. Judge Ergoine needed to be able to discuss confidential and sensitive matters with her employee. She let the employee go, hired her own staff person, and is now facing a grievance from the former employee.

**REP. NEWMAN** explained that when Judge Krueger, from Butte, defeated Judge Purcell, the County found Judge Purcell's secretary another job thereby relieving her as Judge Krueger's personal assistant. He stated that this bill is not about firing competent employees but rather about allowing judges to have staff they can trust and rely on.

**EXECUTIVE ACTION ON HB 497**

**Motion:** **REP. STOKER** moved that HB 497 DO PASS.

**Motion/Vote:** **REP. EVERETT** moved that HB 497 BE AMENDED. Motion failed 9-9, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, NOENNIG, NEWMAN, RICE, SALES, STOKER, and THOMAS voting aye.

**Discussion:**

The Committee discussed property rights and whether this bill would constitute a taking. It also discussed the broad, unintended consequences of the bill and how it could prohibit various forms of entertainment, regular dancing, theatrical plays, or musicals.

**Motion/Vote:** **REP. GALLUS** moved that HB 497 BE TABLED. Motion carried 11-7, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, STOKER, and THOMAS voting no.

**EXECUTIVE ACTION ON HB 701**

**Motion:** REP. GALLUS moved that HB 701 DO PASS.

**Discussion:**

REP. NEWMAN explained that the Supreme Court is unique and different because they can move secretaries around. With a district court judge, they only have one employee and it is imperative they have someone whom they can trust with the most confidential and sensitive matters. At will employees come and go as the elected official desires and that is the nature of the beast. REP. NOENNIG explained that under the wrongful discharge act, there is not at-will employment; you cannot terminate someone after their probation period without cause. He is concerned about the language of the bill. REP. NEWMAN stated there has to be a reason for the discharge and in the case of a judge, the reason for discharge would be they need a trusted, confidential employee.

***{Tape: 2; Side: B; Approx. Time Counter: 1 - 43}***

REP. STOKER stated that he has a number of problems with the bill. He felt it would be a bad thing if judges are unable to choose their staff. He had a problem with pulling 160 judicial employees out of their jobs and Montana is a tough place to get a job.

REP. LASZLOFFY stated he would not, as an elected official, want to be in the position to take on his opponent's staff. He felt that if people want job security, then working for an elected official would not be the likely job for them.

REP. PARKER stated that people were hired "at-will" at the judge's discretion. He emphasized that we need an independent judiciary; that this is not a state agency; that judges are elected by the people. A judge shouldn't have to fear their secretary is leaking information out on sensitive matters such as how the judge will rule.

***{Tape: 2; Side: B; Approx. Time Counter: 44 - 124}***

REP. NOENNIG asked what would happen to these "at-will" employees. John MacMaster stated that Greg Petesch and Dave Boyer were hired by the Legislative Council and are not covered by the pay plan. He thinks the Judicial Branch would work the same way. REP. NEWMAN asked whether there was a way to maintain the integrity of the pay plan to insure the pay matrix of "at-will" employees. Justice Gray responded that the title of the



bill discusses the pay plan and the bill discusses everything under the sun. **REP. NEWMAN** stated the bill is to revise the Judicial Branch personnel plan not the pay plan so he does not know why "pay plan" instead of "personnel plan" wound up in the title.

**Motion/Vote:** **REP. NEWMAN** moved that HB 701 BE AMENDED. (Replace "pay plan" with "personnel plan.") Motion carried 16-0, by voice vote. (REPS. LANGE and LASZLOFFY had stepped out of the room.)

*{Tape: 2; Side: B; Approx. Time Counter: 124 - 273}*

**Motion/Vote:** **REP. GUTSCHE** moved that HB 701 DO PASS AS AMENDED. Motion carried 12-6, by roll call vote, with REPS. NOENNIG, RICE, SALES, SHOCKLEY, STOKER, and THOMAS voting no.

*{Tape: 2; Side: B; Approx. Time Counter: 274 - 355}*

#### EXECUTIVE ACTION ON HB 510

**Motion:** **REP. STOKER** moved that HB 510 DO PASS.

**Motion:** **REP. CLARK** moved that HB 510 BE AMENDED.

#### **Discussion:**

**REP. CLARK** explained his amendments stating they would reinstate the original sentence. He stated that eighty percent of sentences are deferred; that judges are basically saying there's no room in the jails. He stated that this bill would allow for treatment for possession, not distribution. The amendment would act as a backup to allow a judge, if all else fails, to go back to the original sentence.

*{Tape: 2; Side: B; Approx. Time Counter: 356 - 515}*

**Vote:** Motion that HB 510 BE AMENDED carried 12-6, by roll call vote, with REPS. GALLUS, LANGE, LASZLOFFY, RICE, SALES, and STOKER voting no.

**Motion/Vote:** **REP. GUTSCHE** moved that HB 510 DO PASS AS AMENDED. Motion failed 4-14, by roll call vote, with REPS. CLARK, FACEY, GUTSCHE, and RASER voting aye.

**Motion/Vote:** **REP. FACEY** moved that HB 510 BE TABLED AND THE VOTE REVERSED. No objection, motion carried.

*{Tape: 2; Side: A; Approx. Time Counter: 1 - 163}*

EXECUTIVE ACTION ON HB 703

Motion: REP. FACEY moved that HB 703 DO PASS.

Discussion:

REP. NOENNIG stated that the bill should be amended on Page 3,  
Line 29

Motion/Vote: REP. NOENNIG moved that HB 703 BE AMENDED. Motion  
carried 16-2, by voice vote; REPS. LANGE and LASZLOFFY voting  
no.) . (

*{Tape: 3; Side: A; Approx. Time Counter: 1 - 162}*

Motion/Vote: REP. SHOCKLEY moved that HB 703 BE AMENDED.  
(Shockley Amendment) Motion failed 8-10, by roll call vote, with  
REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, MALCOLM, SHOCKLEY,  
and STOKER voting aye.

Motion/Vote: REP. FACEY moved that HB 703 DO PASS AS AMENDED.  
Motion carried 10-8, by roll call vote, with REPS. EVERETT,  
LANGE, LASZLOFFY, STOKER, MALCOLM, RICE, SALES, and SHOCKLEY  
voting no.

*{Tape: 3; Side: A; Approx. Time Counter: 163 - 429}*

EXECUTIVE ACTION ON HB 695

Motion: REP. SALES moved that HB 695 DO PASS.

Motion: REP. SHOCKLEY moved that HB 695 BE AMENDED.

Discussion:

John MacMaster explained that the amendments change the  
definition of emergency care on Page 2, Line 8. It would insert  
language that emergency care is "care for a person who enters or  
is brought to a health care facility and needs immediate medical  
care." CHAIRMAN SHOCKLEY stated it is a problem for the  
Legislature to make rules of evidence.

Vote: Motion that HB 695 BE AMENDED carried 15-1, by voice vote,  
with REP. GALLUS voting no. (REPS. LASZLOFFY and LANGE had  
stepped out of the room.)

Motion: REP. FACEY moved that HB 695 DO PASS AS AMENDED.

Motion/Vote: REP. GALLUS moved that HB 695 BE AMENDED. (Gallus amendment to Page 2, Lines 3-6.) Motion failed 9-9, by voice vote, with REPS. CLARK, FACEY, GALLUS, GUTSCHE, HARRIS, NEWMAN, NOENNIG, PARKER, and RASER voting aye.

*{Tape: 3; Side: B; Approx. Time Counter: 1 - 125}*

Motion/Vote: REP. SHOCKLEY moved that HB 695 BE AMENDED. (Shockley amendment to Page 2, Line 5.) Motion carried 10-8, by roll call vote, with REPS. CLARK, FACEY, GALLUS, PARKER, RASER, GUTSCHE, HARRIS, and NEWMAN voting no.

*{Tape: 3; Side: B; Approx. Time Counter: 126 - 242}*

Motion/Vote: REP. THOMAS moved that HB 695 DO PASS AS AMENDED. Motion failed 8-10, by roll call vote, with REPS. EVERETT, LANGE, LASZLOFFY, RICE, SALES, SHOCKLEY, STOKER, and THOMAS voting aye.

Motion/Vote: REP. GALLUS moved that HB 695 BE TABLED AND THE VOTE REVERSED. No Objection, Motion Carried.

#### EXECUTIVE ACTION ON HB 289

Motion/Vote: REP. NEWMAN moved TO TAKE HB 289 OFF THE TABLE. Motion carried 10-4, by roll call vote, with REPS. CLARK, SALES, RICE, and GUTSCHE voting no. (REPS. RASER, LASZLOFFY, STOKER and LANGE were absent.)

#### Discussion:

REP. NEWMAN stated that this bill failed by an 8-10 vote. He stated he would attempt to resurrect it by striking all of the criminal penalties. He explained that if a person refused a BAC, the trier of fact, usually the jury, could infer the person is under the influence and the inference would be subject to rebuttal. He stressed that he does not want to criminalize a person for refusing to submit to a BAC.

*{Tape: 3; Side: B; Approx. Time Counter: 243 - 510}*

Motion: REP. NEWMAN moved that HB 289 DO PASS.

Motion/Vote: REP. NEWMAN moved that HB 289 BE AMENDED. Motion carried 12-1, by voice vote, (members present), REP. RICE voting no. (REPS. RASER, LASZLOFFY, STOKER, LANGE, and HARRIS were absent.)

**Motion/Vote:** REP. NEWMAN moved that HB 289 DO PASS AS AMENDED.

**Motion carried 14-1, by voice vote, with REP. RICE voting no.**

(REPS. LASZLOFFY, LANGE and RASER absent.)

***{Tape: 4; Side: A; Approx. Time Counter: 1 - 70}`***

**ADJOURNMENT**

Adjournment: 12 P.M.

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REP. JIM SHOCKLEY, Chairman

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LISA SWANSON, Secretary

JS/LS

**EXHIBIT** (juh41aad)